(5)

No. 94-514

Supreme Court, U.S.
FILED
FEB 21 1995

In the Supreme Court of the United States

OCTOBER TERM, 1994

UNITED STATES OF AMERICA, PETITIONER

v.

MICHAEL E. GAUDIN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

RICHARD HANSEN
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1001 Fourth Ave.
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PETITION FOR WRIT OF CERTIORARI FILED SEPTEMBER 16, 1994
CERTIORARI GRANTED JANUARY 6, 1995

BEST AVAILABLE COPY

41pp

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

Docket No. CR-89-34-M-PGH

UNITED STATES OF AMERICA, PLAINTIFF

v.

MICHAEL E. GAUDIN, DEFENDANT

RELEVANT DOCKET ENTRIES

DATE	No.	PROCEEDINGS
10/19/89	1	CRIMINAL COVER SHEET
	2	INDICTMENT
	—	ENT REC OF GJ concurring in GF. Case assigned to Mssla Div. C/S ordered & issued. Orig sms, 2 cpys & 2 cpys of Indict to USM/GF, cpys to USM/Blgs, AUSA, USPO (arraign set for 11-1-89 @ 10:00 a.m. w/Magistrate Whelan in Butte.
10/25/89	—	C/S issued setting arraign for 11-16-89 @ 10:00 a.m. before Magistrate Larson in Missoula. Orig & 2 cpys & 2 crt cpys of Indict (w/Magistrate entry on last page omitted) hnd'd to USM/Hlna.
10/31/89	4	Filed ORDER that the caption on the indictment be changed frm Butte Div to Msla Div. cpys mailed USA Hlna
10/25/89	3	Filed USA Mot to correct indicement caption.
11/3/89	5	orig CRIM SUMMONS iss'd 10-19-89 ret'd unserved.

DATE	No.	PROCEEDINGS
11/6/89	—	Ent rec of arraignmnt bef Mag. Larson @ Mssla; Tammy Stuckey, RPR. Deft pt w/ atty Moses who adv's Crt both he & Mr. Goff will be representing deft. Deft swn & exam'd by Crt—understnds proceedings & all rts—has rd indictmnt & understnds chgs & penalties—waives rding. Pleads: not guilty to ea & all 46 counts. Trial set for 12-18-89 @ 9:30 in Hlna. PT Mtns due in 10 days. U.S. recs OR w/stand conditions —deft to be processed by U.S.M. & PT Svcs & then released on OR. Crt rpr's notes retained in Mssla.
"	6	ORDER SETTING CONDITIONS OF RELEASE—cpys to deft, AUSA, U.S.M., PTS.
11/7/89	—	FILE & DOC SHEET TO HLNA frm Mssla.
11/8/89	7	SUMMONS issued to deft Gaudin returned as served 11-1-89 at Roberts Realty in Victor, MT.
1/9/89	8	NOTICE OF APPEARANCE AS CO-CNSL on behalf of deft by Robert Goff of Church, Harris, Johnson & Wms.
11/14/89	9	ORDER—Judge Lovell recuses himself from this case. The clerk is directed to notify cnsl of the entry of this order & to forward the file to Chief Judge James F. Battin for reassignment. Copies to Larsen, Msla Clerk, Cummings, Moses, Goff, CCL, Tami. ds for gr
		* * * *
(9) 11/20/89	14	ORDER—this case is reassigned to Hon. Paul G. Hatfield. Copies to Cummings, McLean, McLean, CCL, Tami, Goff.
		* * * *

DATE	No.	PROCEEDINGS
12/7/89	—	ENT REC OF CRT PROCEEDINGS/Evid hrg on PT Mtns: Crt, AUSA/Darragh, deft cnsl/Moses & Cummings & deft Bottelson present. Deft cnsl Moses' argmt re Gaudin's mtns to dismiss, for bill of particulars & for severance re Cnts 43-46. Deft cnsl Cummings' argmt re PT mtns for severance re Payne & Bottelson, AUSA'S resp. Deft cnsl Moses' further argument. Deft cnsl Cummings' further argmt. AUSA'S resp. Deft cnsl Moses' mtns to move trial to GF or Msla, for joinder of Cnt 1 w/Cnts 2-42 & for USA to explain/clarify allegations in Cnts 2-42. AUSA'S resp. Crt & cnsl discuss trial dates. Crt orders cnsl confer by 12/22/89 & file PT mtns by 1/2/90; jury instr due 1/8/90; jury trial 2/5/90 at 9:30 AM in GF. Crt takes PT mtns under advisement 2:35 Crt adjourns
12/8/89	17	ORDER: 1/deft Bottelson shall be tried separately on Cnt 43 on 12/19/89 at 9:30 AM in GF as case #1; 2/deft Payne shall be tried separately on Cnts 43-46 on 12/19/89 at 9:30 AM in GF as case #2; 3/trial of Gaudin set on 12/18/89 is VACATED & cont to 2/12/90 at 9:30 AM in GF. Cpys to cnsl/3, USM, USPO
		* * * *
12/8/89	19	Pltf's Proposed Instructions [cpy for crt]
		* * * *
01/08/90	28	Deft. Gaudin Mtn. to Give Jury Insts.—w/c/s. [Called for cpy.]
		* * * *
4/23/90	—	ENT REC OF CRT PROCEEDINGS/JURY SELECTION & JURY TRIAL DAY 1:
		* * * *

DATE	No.	PROCEEDINGS
4/23/90	51	JURY LIST w/peremptory challenges
4/24/90	—	ENT REC OF CRT PROCEEDINGS/DAY 2 OF JURY TRIAL:
		* * * *
4/25/90	—	ENT REC OF CRT PROCEEDINGS/ DAY 3 OF JURY TRIAL:
		* * * *
4/26/90	—	ENT REC OF CRT PROCEEDINGS/DAY 4 of JURY TRIAL:
		* * * *
4/27/90	—	ENT REC OF CRT PROCEEDINGS/DAY 5 OF JURY TRIAL:
		* * * *
4/30/90	—	ENT REC OF CRT PROCEEDINGS/DAY 6 OF JURY TRIAL:
		* * * *
5/1/90	—	ENT REC OF CRT PROCEEDINGS/DAY 7 OF JURY TRIAL:
		* * * *
5/2/90	—	ENT REC OF CRT PROCEEDINGS/DAY 8 OF JURY TRIAL:
		* * * *
5/3/90	—	ENT REC OF CRT PROCEEDINGS/DAY 9 OF JURY TRIAL:
		* * * *
5/4/90	—	ENT REC OF CRT PROCEEDINGS/DAY 10 OF JURY TRIAL:
		* * * *
5/7/90	—	ENT REC OF CRT PROCEEDINGS/DAY 11 OF JURY TRIAL:
		* * * *
5/8/90	—	ENT REC OF CRT PROCEEDINGS/DAY 12 of JURY TRIAL:

DATE	No.	PROCEEDINGS
5/9/90	—	ENT REC OF CRT PROCEEDINGS/DAY 13 OF JURY TRIAL:
		* * * *
5/9/90	59	CRT'S FINAL INSTRUCTIONS
		* * * *
5/9/90	62	VERDICT [guilty all cnts]
		* * * *
5/17/90	70	ORDER: Deft's mtn for new trial is denied. Cpys to cnsl/2, USM, USPO w/c/clk
		* * * *
08/27/90	—	Entered Record of Crt. Proceedings; Sentencing; Anne Perron crt. rptr; At 3:03 p.m., w/crt., AUSA/McLean deft. in person w/ ret. cnsl. Stephen Moses & Jay Lansing, & USPO/Watters present. Jay Lansing gave oral argument in re to deft.'s memo. that the actions in ct.'s 2-46 should not be included in sentencing guidelines w/cnt. 1 as it is double jeopardy. Crt. ordered that deft.'s obj.'s & arguments are overruled, all defense mtns, under advisement are DENIED. Ct. 43 of indict is DISMISSED. Moses' stmt. & recommendations to crt. in re to sent. McLean's stmt. & recommendations to crt. in re to sentencing. Moses responses to McLean's stmts. Crt. ordered that deft. be committed to csty. of BOP for a term of 36 mos. on Ct. I. Deft. committed to csty. of BOP on remaining ct.'s w/exceptions of Ct.'s 18 & 43 which have been dismissed to a total of 10 mos., each ct. 2-17, 19-42, 44-46 to run concurrently. Upon release deft. placed on 3 yrs. super. release, to comply w/standard conditions of USPO. Add. condition that deft. co-operate w/the

DATE	No.	PROCEEDINGS
		selling of any real estate remaing. Deft. to make restitution in amt.'s & to whom, to be determined by cnsl. & USPO. Deft. to pay CVF amt. of $50.00 each cnt. for total of $2,200.00. Deft.'s mtn. that deft. ramin out on present bond pending appeal. McLean's obj.'s to same & requests deft. be remanded to csty. of U.S.M. Crt. ordered deft.'s cnsl. wi/48 hrs brief issue of remaining out on bond pending appeal & McLean 48 hrs. to reply. Crt. takes matter under advisement. 3:39 p.m., crt. in recess.
08/27/90	—	CONFIDENTIAL PRESENTENCE REPORT [left side of file]
		* * * *
09/04/90	79	Judgt. & Commitment; FILED & ENTERED IN CRIMINAL JUDGT. Docket Volume 32, Page 1906; Deft. committed to csty. of BOP to be imprisoned for term of 36 mos. on Ct. I. Csty. of BOP on each Ct. 2-17, 19-42, 44, 45, & 46 all to be served concurrently Upon release deft. placed on super. release for term of 3 yrs. each on Ct. 1-17, 19-42, 44, 45 & 46; all such terms run concurrently. WI/72 hrs. of release from csty of BOP, deft. report in person to USPO in district to which deft. is released. Deft. comply w/standard conditions of USPO & add. conditions: 1/ cooperate to accomplish the sale of any real estate remaining. 2/ Make restitution in amts. & to the various persons as determined by cnsl. & USPO.

DATE	No.	PROCEEDINGS
		3/ Pay CVF in amt. of $2,200.00—w/c/c/m to AUSA/Mclean cpy. & cert. cpy., Moses, Goff, USPO/2 cpys. USM/5 cert. cpys.
09/04/90	80	Transcript of Sentencing Hearing on 08/27/90—cpys. to USPO
		* * * *
9/6/90	81	Deft's NOTICE OF APPEAL; fee pd. @ Gt. Falls, Rec't #00488.
		* * * *
10/29/90	85 thru 95	TRANSCRIPTS ON APPEAL (11 volumes) filed by Lisa Lewis, RPR.
11/20/90	—	CERTIFICATE OF RECORD snt to C.C.A.

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IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Docket No. 90-30334

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

MICHAEL E. GAUDIN, DEFENDANT-APPELLANT

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
	* * * *
9/27/90	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. Filed in D.C. on 9/4/90.; setting schedule as follows: transcript shall be ordered by 9/27/90 for Michael E. Gaudin; transcript shall be filed by 10/29/90; appellants' briefs, excerpts due by 12/10/90 for Michael E. Gaudin; appellees' brief due 1/9/91 for USA; appellants' reply brief due by 1/23/91 for Michael E. Gaudin. (RT required: yes.) (Sentence imp: 36 months.) [90-30334] (jhc) [90-30334]
	* * * *
10/7/91	ARGUED AND SUBMITTED TO J. C. WALLACE, Proctor R. HUG, Pamela A. RYMER [90-30334] (er) [90-30334]
	* * * *
10/25/91	Filed order (J.C. WALLACE, Proctor R. HUG & Pamela A. RYMER) the parties are directed to file simultaneous supplemental briefs addressing the question of harmless error. The briefs shall not exceed 15 pages and shall be filed within 21 days of the date of the filing of this order. Submission of this case is withdrawn pending the receipt of the briefs. [90-30334] (jr) [90-30334]
	* * * *

DATE	PROCEEDINGS
6/22/92	Filed order (J. C. WALLACE, Proctor R. HUG, Pamela A. RYMER): This case is hereby resubmitted effective 06/19/92. [90-30334] (sm) [90-30334]
	* * * *
2/18/93	FILED OPINION: AFFIRMED in part, REVERSED in part and REMANDED. (Terminated on the Merits after Oral Hearing; Affirmed (in part) and Reversed (in part) and Remanded; Written, Signed, Published. J. C. WALLACE; Proctor R. HUG, author; Pamela A. RYMER) FILED AND ENTERED JUDGMENT. [90-30334] (sm) [90-30334]
	* * * *
6/22/93	Filed order (J. C. WALLACE, Proctor R. HUG, Pamela A. RYMER): The opinion filed 02/18/93 is withdrawn. [90-30334] (sm) [90-30334]
6/22/93	OPINION FILED (J. C. WALLACE, Proctor R. HUG, Pamela A. RYMER): The conviction on Count 1, equity skimming, is AFFIRMED. The convictions on Courts 2-17, 19-42, and 44-46 are REVERSED and REMANDED for further proceedings in accordance with this opinion. [90-30334] (sm) [90-30334]
	* * * *
9/16/93	Filed order (J. C. WALLACE): Upon the vote of a majority of nonrecused regular active judges of this court, it is ordered that this case be reheard by the en banc court pursuant to Circuit [R]ule 35-3. [90-30334] (sm) [90-30334]
	* * * *
11/18/93	ARGUED AND SUBMITTED TO J. C. WALLACE, Proctor R. HUG, Thomas TANG, Betty B. FLETCHER, Stephen R. REINHARDT, Robert R. BEEZER, Alex KOZINSKI, Edward LEAVY, Pamela A. RYMER, Thomas G. NELSON, Andrew J. KLEINFELD [90-30334] (ml) [90-30334]
	* * * *

DATE	PROCEEDINGS
6/21/94	OPINION FILED (J. C. WALLACE, Procter R. HUG, Author, Thomas TANG, Betty B. FLETCHER, Stephen R. REINHARDT, Robert R. BEEZER, Alex KOZINSKI, Dissenting, Edward LEAVY, Pamela A. RYMER, Thomas G. NELSON, Andrew J. KLEINFELD): We confirm our prior authority that the issue of materiality in charges under 18 U.S.C. 1001 must be submitted to the jury under appropriate instructions. Therefore, in conformity with the panel opinion, the conviction of Count 1, equity skimming is AFFIRMED. The convictions on Counts 2-17, 19-42, and 44-46 are REVERSED and REMANDED for further proceedings in accordance with the opinion of this court. [90-30334] (sm) [90-30334]
	* * * *
8/12/94	MANDATE ISSUED [90-30334] (ah) [90-30334]
9/26/94	Received notice from Supreme Court: petition for certiorari Supreme Court No. 94-514 filed on 9/19/94. [90-30334] (mhf) [90-30334]
10/31/94	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 94-6571 filed on 10/21/94. [90-30334] (ah) [90-30334]
1/18/95	Filed Supreme Court order, certiorari denied on 1/9/95. [90-30334] (crw) [90-30334]
1/18/95	Received notice from Supreme Court, petition for certiorari SC 94-514 GRANTED on 1/6/95, limited to Question 1 presented by the Petition. [PANEL] (mlm) [90-30334]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

Case No. CR-89-18-BU-CCL

UNITED STATES OF AMERICA, PLAINTIFF

v.

MICHAEL E. GAUDIN,
d/b/a HALLMARK PROPERTIES;
MONTANA REGENCY, INC.;
NORTHWEST HOUSING, INC.,

and

ROBERT FORREST PAYNE, JR.

and

RUSSELL CARL BOTTELSON, JR.
DEFENDANT[S].

INDICTMENT

[Filed Oct. 19, 1989]

COUNT ONE

From on or about December 31, 1985 and continuing through on or about December 31, 1988 within the District of Montana, Michael Earl Gaudin doing business as Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. with intent to defraud knowing and willfully engaged in the following pattern and practice:

A. Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. pur-

chased approximately 29 single family dwellings the loans on which were secured by deeds of trust and mortgages and insured by the United States Secretary of Housing and Urban Development. Within one year of said real estate purchases the loans were in default.

B. That Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. knowingly failed to make payments under the mortgage or deed of trust of said residential dwellings as the payments came due.

C. That Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. rented the properties to various tenants and applied and authorized the application of rents from said dwellings in the approximate amount of $120,000 for his own use. All in violation of Title 12 U.S.C. § 1709-2.

COUNT TWO THROUGH FORTY-TWO

That on or about the date for each count listed below within the District of Montana, Defendant Michael E. Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration did knowingly and willfully make or caused to be made a false writing and document knowing said writing and document contained false, fictitious and fraudulent statements and entries in that the Defendant Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. submitted and caused to be submitted to the United States in connection with the loan closing settlement of each of the District of Montana properties listed in the column entitled "Property" a "Settlement Statement" on which Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. represented that the borrower had made a cash payment at settlement of the dollar amount listed in the column entitled

"Settlement Sheet" whereas in truth and in fact as Defendant Michael E. Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. well knew the borrowers had made no actual cash payment and had in fact received a $1,000 payment from Michael Earl Gaudin for acting as a straw buyer:

Count	Date	Property	Settlement Sheet
Two	12/31/85	212 Higgins, Ave. Stevensville, MT 59870	$7,022.64
Three	03/20/86	450 Sixth Ave. Victor, MT 59875	6,860.19
Four	02/10/86	655 Sixth Ave. Victor, MT 59875	237.68
Five	02/10/86	309 DeSmet St. Hamilton, MT 59840	137.78
Six	01/15/86	514 Main St. Hamilton, MT 59480	7,229.90
Seven	02/13/86	709 North 7th St. Hamilton, MT 59840	696.75
Eight	02/13/86	601 & 602 1/2 N. 2nd St. Hamilton, MT 59840	537.73
Nine	02/02/86	849 Porter Hill Road Stevensville, MT 59870	158.83
Ten	03/11/86	208 Doran Lane Hamilton, MT 59840	7,708.81
Eleven	03/28/86	529 Folly Lane Stevensville, MT 59870	94.11
Twelve	3/24/86	523 Folly Lane Stevensville, MT 59870	122.61
Thirteen	03/24/86	535 Folly Lane Stevensville, MT 59870	31.07
Fourteen	03/28/86	545 Folly Lane Stevensville, MT 59870	383.46

Count	Date	Property	Settlement Sheet
Fifteen	05/14/86	295 First Street Corvallis, MT 59828	640.24
Sixteen	06/17/86	21 Meadow Lane Victor, MT 59875	846.39
Seventeen	07/22/86	175 N. Tudor Victor, MT 59875	524.40
Eighteen	08/29/86	675 Main Street Victor, MT 59875	1,820.10
Nineteen	12/09/86	NHN Pine Drive Victor, MT 59875	179.77
Twenty	07/31/86	705 21st St. North Great Falls, MT 59401	523.03
Twenty-One	07/31/86	144 Blake Street Victor, MT 59875	555.61
Twenty-Two	08/21/86	108 Second St. Alberton, MT 59820	191.54
Twenty-Three	08/19/86	908 Fourteenth Ave. S. Great Falls, MT 59405	740.84
Twenty-Four	08/13/86	210 16th St. North Great Falls, MT 59401	726.83
Twenty-Five	08/13/86	119 4th St. W. Cascade, MT 59421	659.54
Twenty-Six	10/17/86	709 35th Ave. N.E. Great Falls, MT 59401	416.39
Twenty-Seven	10/17/86	NHN 3rd Ave. S. and Main Street Belt, MT 59412	3,300.07
Twenty-Eight	11/06/86	126 4th St. W. Cascade, MT 59421	129.93
Twenty-Nine	11/12/86	921 3rd Ave. South Great Falls, MT 59401	400.76
Thirty	10/16/86	1320 11th Ave. S. Great Falls, MT 59401	375.36

Count	Date	Property	Settlement Sheet
Thirty-One	11/06/86	1524 4th Ave. N.W. Great Falls, MT 59401	91.83
Thirty-Two	12/01/86	301 12th St. North Great Falls, MT 59401	189.16
Thirty-Three	10/17/86	3209 3rd Ave. North Great Falls, MT 59401	369.13
Thirty-Four	11/13/86	1117 10th Ave. N. Great Falls, MT 59401	395.28
Thirty-Five	12/01/86	420 18th St. S. Great Falls, MT 59401	209.64
Thirty-Six	11/13/86	1308 2nd Ave. S. Great Falls, MT 59401	322.55
Thirty-Seven	12/02/86	415 Seventh St. Hamilton, MT 59840	171.31
Thirty-Eight	12/24/86	1020 2nd Ave. S.W. Great Falls, MT 59401	296.42
Thirty-Nine	01/28/87	518 1st Ave. S.W. Great Falls, MT 59404	321.44
Forty	01/05/87	1204 2nd Ave. South Great Falls, MT 59405	164.26
Forty-One	12/24/86	3221 6th Ave. North Great Falls, MT 59401	272.86
Forty-Two	12/30/86	721 8th Ave. South Great Falls, MT 59405	256.22

and by so representing Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. obtained approximately $1,013,046.00 in federally insured funds to which he was not entitled in violation of Title 18 U.S.C. § 1001.

COUNT FORTY-THREE

That on or about the 2nd day of September, 1986 within the State and District of Montana, Russell Carl Bottelson and Michael Earl Gaudin in a matter within

the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration did knowingly and willfully make or cause to be made false, fictitious and fraudulent statement to be made on a residential appraisal report HUD Form 92800 in that Russell Carl Bottelson signed line 34A of said form certifying that he had carefully viewed the property described in the report when in truth and in fact as they then well knew the property described in the report had been viewed by Robert Forrest Payne, Jr. all in violation of Title 18 U.S.C. § 1001.

COUNT FORTY-FOUR

That on or about the 16th day of November, 1986 in the State and District of Montana the Defendants Robert Forrest Payne, Jr. and Michael E. Gaudin in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration did knowingly and willfully cause false, fictitious and fraudulent statements to be made on a residential appraisal report HUD Form 92800 in that Payne grossly overstated the fair market value of the subject property and further falsely represented the condition of the interior walls, floors and plumbing to be "good" when in truth and in fact as Payne and Gaudin then well knew the subject property had a fair market value of approximately $20,000 less than appraised by Payne and the walls, floors and plumbing were in very poor condition all in violation of Title 18 U.S.C. § 1001.

COUNT FORTY-FIVE

That on or about the 19th day of November, 1986 in the State and District of Montana the Defendants Robert Forrest Payne, Jr. and Michael E. Gaudin in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration did knowingly and will-

fully cause a false, fictitious and fraudulent statement to be made on a residential appraisal report HUD Form 92800 in that Payne grossly overstated the fair market value of the subject property to be $46,000 when in truth and in fact that Payne and Gaudin then well knew the fair market value of the property was $20,000 less than listed on the residential appraisal report all in violation of Title 18 U.S.C. § 1001.

COUNT FORTY-SIX

That sometime prior to February 14, 1987 in the State and District of Montana the Defendants Robert Forrest Payne, Jr. and Michael E. Gaudin in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration did knowingly and willfully cause a false, fictitious and fraudulent statement to be made on a residential appraisal report HUD Form 92800 in that Payne listed the fair market value of the subject property at $48,500 when in truth and in fact as Payne and Gaudin then well knew the actual fair market value of the subject property was approximately $12,000 all in violation of Title 18 U.S.C. § 1001.

A TRUE BILL.

/s/ Loraine Waters
Foreperson

/s/ [Illegible]
United States Attorney
For the District of Montana

[Clerk's seal omitted in printing]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

Docket No. CR-89-34-M-PGH

UNITED STATES OF AMERICA, PLAINTIFF

v.

MICHAEL E. GAUDIN, DEFENDANT

VOLUME XI

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE PAUL G. HATFIELD
UNITED STATES DISTRICT JUDGE, and a jury.

[May 7, 1990, 2:00 p.m.]

RELEVANT JURY INSTRUCTIONS

* * * * *

[2371] THE COURT: Members of the jury, now that you heard the evidence and the argument, it becomes my duty to give you the instructions of the court as to the law that applies in this case.

* * * * *

[2388] COUNTS TWO THROUGH FORTY-TWO of the Indictment in this case charge:

That on or about the date for each count listed below within the District of Montana, defendant Michael E. Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration did knowingly and willfully make or caused to be made a false writing and document knowing

said writing and document contained false, fictitious and fraudulent statements and entries in that the defendant Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. submitted and caused to be submitted to the United States in connection with the loan closing settlement of each of the District of Montana properties listed in the column entitled "Property" a "Settlement Statement" on which Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. represented that the borrower had made a cash payment at settlement of the dollar amount listed in the column entitled "Settlement Sheet" whereas in truth and in fact as defendant Michael E. Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. well knew the borrowers [2389] had made no actual cash payment and had in fact received a $1,000 payment from Michael Earl Gaudin for acting as a strawbuyer:

Count	Date	Property	Settlement Sheet
Two	12/31/85	212 Higgins, Ave. Stevensville, MT 59870	$7,022.64
Three	03/20/86	450 Sixth Ave. Victor, MT 59875	6,860.19
Four	02/10/86	655 Sixth Ave. Victor, MT 59875	237.68
Five	02/10/86	309 DeSmet St. Hamilton, MT 59840	137.78
Six	01/15/86	514 Main St. Hamilton, MT 59480	7,229.90
Seven	02/13/86	709 North 7th St. Hamilton, MT 59840	696.75
Eight	02/13/86	601 & 602 1/2 N. 2nd St. Hamilton, MT 59840	537.73
Nine	02/02/86	849 Porter Hill Road Stevensville, MT 59870	158.83
Ten	03/11/86	208 Doran Lane Hamilton, MT 59840	7,708.81

Count	Date	Property	Settlement Sheet
Eleven	03/28/86	529 Folly Lane Stevensville, MT 59870	94.11
Twelve	03/24/86	523 Folly Lane Stevensville, MT 59870	122.61
Thirteen	03/24/86	535 Folly Lane Stevensville, MT 59870	31.07
Fourteen	03/28/86	545 Folly Lane Stevensville, MT 59870	383.46
Fifteen	05/14/86	295 First Street Corvallis, MT 59828	640.24
Sixteen	06/17/86	21 Meadow Lane Victor, MT 59875	846.39
Seventeen	07/22/86	175 N. Tudor Victor, MT 59875	524.40
Eighteen	08/29/86	675 Main Street Victor, MT 59875	1,820.10
Nineteen	12/09/86	NHN Pine Drive Victor, MT 59875	179.77
Twenty	07/31/86	705 21st St. North Great Falls, MT 59401	523.03
Twenty-One	07/31/86	144 Blake Street Victor, MT 59875	555.61
Twenty-Two	08/21/86	108 Second St. Alberton, MT 59820	191.54
Twenty-Three	08/19/86	908 Fourteenth Ave. S. Great Falls, MT 59405	740.84
Twenty-Four	08/13/86	210 16th St. North Great Falls, MT 59401	726.83
Twenty-Five	08/13/86	119 4th St. W. Cascade, MT 59421	659.54
Twenty-Six	10/17/86	709 35th Ave. N.E. Great Falls, MT 59401	416.39
Twenty-Seven	10/17/86	NHN 3rd Ave. S. and Main Street Belt, MT 59412	3,300.07

Count	Date	Property	Settlement Sheet
Twenty-Eight	11/06/86	126 4th St. W. Cascade, MT 59421	129.93
Twenty-Nine	11/12/86	921 3rd Ave. South Great Falls, MT 59401	400.76
Thirty	10/16/86	1320 11th Ave. S. Great Falls, MT 59401	375.36
Thirty-One	11/06/86	1524 4th Ave. N.W. Great Falls, MT 59401	91.83
Thirty-Two	12/01/86	301 12th St. North Great Falls, MT 59401	189.16
Thirty-Three	10/17/86	3209 3rd Ave. North Great Falls, MT 59401	369.13
Thirty-Four	11/13/86	1117 10th Ave. N. Great Falls, MT 59401	395.28
Thirty-Five	12/01/86	420 18th St. S. Great Falls, MT 59401	209.64
Thirty-Six	11/13/86	1308 2nd Ave. S. Great Falls, MT 59401	322.55
Thirty-Seven	12/02/86	415 Seventh St. Hamilton, MT 59840	171.31
Thirty-Eight	12/24/86	1020 2nd Ave. S.W. Great Falls, MT 59401	296.42
Thirty-Nine	01/28/87	518 1st Ave. S.W. Great Falls, MT 59404	321.44
Forty	01/05/87	1204 2nd Ave. South Great Falls, MT 59405	164.26
Forty-One	12/24/86	3221 6th Ave. North Great Falls, MT 59401	272.86
Forty-Two	12/30/86	721 8th Ave. South Great Falls, MT 59405	256.22

and by so representing Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. obtained approximately $1,013,046.00 in

federally insured funds to which he was not entitled in violation of Title 18 U.S.C. § 1001.

With respect to the offenses charged in Counts Two through Forty-Two of the Indictment, you are instructed that section 1001 of Title 18 of the United States Code provides:

[2392]

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes false, fictitious or fraudulent statement or entry . . . shall be guilty of an offense against the laws of the United States.

In order for the defendant, MICHAEL E. GAUDIN, to be found guilty of the offenses charged in Counts Two through Forty-Two of the Indictment, the Government must prove, as to each count, the following six essential elements beyond a reasonable doubt:

FIRST: That the defendant, MICHAEL E. GAUDIN, made, or caused to be made, a writing which contained a statement in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration;

SECOND: That the writing contained false, fictitious and fraudulent statements and entries;

THIRD: That the defendant, MICHAEL E. GAUDIN, knew or should have known that the statement was made in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration;

FOURTH: That the defendant, MICHAEL E. GAUDIN, knew that the writing contained false, fictitious and fraudulent statements and entries;

[2393] *FIFTH*: That the defendant, MICHAEL E. GAUDIN, acted with the intention of influencing the

United States Department of Housing and Urban Development acting through the Federal Housing Administration; and

SIXTH: That the statement was material to the activities or decisions of the United States Department of Housing and Urban Development acting through the Federal Housing Administration.

I remind you again that the burden is upon the Government to prove, beyond a reasonable doubt, each and every one of these essential elements I have set forth. The law never imposes upon the defendant in a criminal case the burden of introducing any evidence or calling any witnesses.

With respect to the first elements set forth above, I instruct you that, as a matter of law, the writing charged in the Indictment contains a statement in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration.

The second element of this charge holds the Government to proving, beyond a reasonable doubt, that the writing contained false, fictitious and fraudulent statements and entries. I instruct you that a statement is "false" or "fictitious", if untrue when made, and then [2394] known to be untrue by the person making it or causing it to be made. A statement or representation is "fraudulent", if known to be untrue, and made or caused to be made with the intent to deceive the government agency to whom submitted.

The word "false" must be considered together with the words "knowingly" and "willfully". An act is done "knowingly" if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason. An act is done "willfully" if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law. The word "knowingly" is added in order to insure that no one would be con-

victed who made or caused to be made a statement or representation which was false because of mistake or accident or other innocent reason.

If you find that defendant, MICHAEL E. GAUDIN, did not knowingly and willfully make false statements or cause any to be made, you should acquit him.

With respect to the fifth element set forth above, you are instructed that whether or not the Government was deceived or suffered monetary loss because of the acts charged in the Indictment is immaterial.

With reference to the sixth element, I instruct you [2395] that the making of a false statement to an agency of the United States Government is not an offense unless the statement made is a material statement. The issue of materiality, however, is not submitted to you for your decision but rather is a matter for the decision of the court. You are instructed that the statements charged in the indictment are material statements.

You are instructed that in this case the Government is required to prove, beyond a reasonable doubt, that Michael Gaudin acted willfully; that is to say voluntarily, and with the specific intent to do something the law forbids.

However, if a person in good faith believes he has conformed to the law, he cannot be guilty of any willful or criminal intent as defined in these instructions. The reasonableness of his belief is for the jury to decide, and this belief is based upon whether he acted in good faith under the circumstances or whether he willfully intended to violate the law. This issue of intent is one which the jury must determine from a consideration of all the evidence in the case bearing upon the defendant's state of mind. Such a good faith belief, if honestly held, would entitle the defendant to an acquittal of the charges made against him.

You are reminded that the Government is required to [2396] prove all of the elements including an element of intent and the defendant need only raise a doubt to this issue to be entitled to an acquittal. In other words, the

burden of proof does not shift to the defendant on the issue of good faith but always remains with the Government to prove willfulness beyond a reasonable doubt.

The defendant claims that he is not guilty of willful wrongdoing because he acted on the basis of advice from his attorney.

If the defendant before taking any action sought the advice of an attorney whom he considered competent, in good faith and for the purpose of securing advice on the lawfulness of his possible future conduct, and made a full and accurate report to this attorney of all material facts of which he has the means of knowledge, and acted strictly in accordance with the advice of his attorney given following his full report, then the defendant would not be willfully doing wrong in doing something the law forbids, as that term is used in these instructions.

Whether the defendant acted in good faith for the purpose of seeking guidance as to questions about which he was in doubt, and whether he made a full and complete report to this attorney, and whether he acted strictly in accordance with the advice received, are questions for [2397] you to determine.

Count Forty-Three of the Indictment in this case charges:

That on or about the 2nd day of September, 1986 within the State and District of Montana, Russell Carl Bottleson and Michael Earl Gaudin in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration did knowingly and willfully make or cause to be made false, fictitious and fraudulent statement to be made on a residential appraisal report HUD Form 92800 in that Russell Carl Bottelson signed line 34A of said form certifying that he had carefully viewed the property described in the report when in truth and in fact as they then well knew the property described in the report had been viewed by Robert Forrest Payne, Jr., all in violation of Title 18 U.S.C. § 1001.

Count Forty-Four of the Indictment in this case charges:

That on or about the 16th day of November, 1986 in the State and District of Montana the defendants Robert Forrest Payne, Jr., and Michael E. Gaudin in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration did knowingly and willfully cause false, fictitious and fraudulent [2398] statements to be made on a residential appraisal report HUD Form 92800 in that Payne grossly overstated the fair market value of the subject property and further falsely represented the condition of the interior walls, floors and plumbing to be "good" when in truth and in fact as Payne and Gaudin then well knew the subject property had a fair market value of approximately $20,000 less than appraised by Payne and the walls, floors and plumbing were in very poor condition all in violation of Title 18 U.S.C. § 1001.

Count Forty-Five of the Indictment in this case charges:

That on or about the 19th day of November, 1986 in the State and District of Montana the defendants Robert Forrest Payne, Jr. and Michael E. Gaudin in a matter within the jurdisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration did knowingly and willfully cause a false, fictitious and fraudulent statement to be made on a residential appraisal report HUD Form 92800 in that Payne grossly overstated the fair market value of the subject property to be $46,000 when in truth and in fact that Payne and Gaudin then well knew the fair market value of the property was $20,000 less than listed on the residential appraisal report all in [2399] violation of Title 18 U.S.C. § 1001.

Count Forty-Six of the Indictment in this case charges:

That sometime prior to February 14, 1987 in the State and District of Montana the defendants Robert Forrest Payne, Jr. and Michael E. Gaudin in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration did knowingly and willfully cause a false, fictitious and fraudulent statement to be made on a residential appraisal report HUD Form 92800 in that Payne listed the fair market value of the subject property to be $48,500 when in truth and in fact as Payne and Gaudin then well knew the actual fair market value of the subject property was approximately $12,000 all in violation of Title 18 U.S.C. § 1001.

In order for the defendant, MICHAEL E. GAUDIN, to be found guilty of the offenses charged in Counts Forty-Three, Forty-Four, Forty-Five and Forty-Six of the Indictment, the Government must prove, as to each count, the following six essential elements beyond a reasonable doubt:

FIRST: That the defendant, MICHAEL E. GAUDIN, caused a statement to be made in a matter within the [2400] jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration;

SECOND: That the statement was false, fictitious and fraudulent;

THIRD: That the defendant, MICHAEL E. GAUDIN, knew or should have known that the statement was made in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration;

FOURTH: That the defendant, MICHAEL E. GAUDIN, knew that the statement was false, fictitious and fraudulent;

FIFTH: That the defendant, MICHAEL E. GAUDIN, acted with the intention of influencing the United States

Department of Housing and Urban Development acting through the Federal Housing Administration; and

SIXTH: That the statement was material to the activities or decisions of the United States Department of Housing and Urban Development acting through the Federal Housing Administration.

With respect to the first element set forth above, I instruct you that, as a matter of law, the writings charged in the Indictment contain statements in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the [2401] Federal Housing Administration.

The second element of this charge holds the Government to proving, beyond a reasonable doubt, that the writings contained false, fictitious and fraudulent statements and entries. I instruct you that a statement is "false" or "fictitious", if untrue when made, and then known to be untrue by the person making it or causing it to be made. A statement or representation is "fraudulent", if known to be untrue, and made or caused to be made with the intent to deceive the government agency to whom submitted.

The word "false" must be considered together with the words "knowingly" and "willfully". An act is done "knowingly" if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason. An act is done "willfully" if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law. The word "knowingly" is added in order to insure that no one would be convicted who made or caused to be made a statement or representation which was false because of mistake or accident or other innocent reason.

If you find that defendant, MICHAEL E. GAUDIN, did not knowingly and willfully make false statements or [2402] cause any to be made, you should acquit him.

With respect to the fifth element set forth above, you are instructed that whether or not the Government was

deceived or suffered monetary loss because of the acts charged in the Indictment is immaterial.

With reference to the sixth element, I instruct you that the making of a false statement to an agency of the United States Government is not an offense unless the statement made is a material statement. The issue of materiality, however, is not submitted to you for your decision but rather is a matter for the decision of the court. You are instructed that the statements charged in the indictment are material statements.

You are instructed that in this case the Government is required to prove, beyond a reasonable doubt, that Michael Gaudin acted willfully; that is to say voluntarily, and with the specific intent to do something the law forbids.

However, if a person in good faith believes he has conformed to the law, he cannot be guilty of any willful or criminal intent as defined in these instructions. The reasonableness of his belief is for the jury to decide, and this belief is based upon whether he acted in good faith under the circumstances or whether he willfully intended to violate the law. This issue of intent is one [2403] which the jury must determine from a consideration of all the evidence in the case bearing upon the defendant's state of mind. Such a good faith belief, if honestly held, would entitle the defendant to an acquittal of the charges made against him.

You are reminded that the Government is required to prove all of the elements including an element of intent and the defendant need only raise a doubt to this issue to be entitled to an acquittal. In other words, the burden of proof does not shift to the defendant on the issue of good faith but always remains with the Government to prove willfulness beyond a reasonable doubt.

The defendant claims that he is not guilty of willful wrongdoing because he acted on the basis of advice from his attorney.

If the defendant before taking any action sought the advice of an attorney whom he considered competent, in

good faith and for the purpose of securing advice on the lawfulness of his possible future conduct, and made a full and accurate report to his attorney of all material facts of which he has the means of knowledge, and acted strictly in accordance with the advice of his attorney given following his full report, then the defendant would not be willfully doing wrong in doing something the law [2404] forbids, as that term is used in these instructions.

Whether the defendant acted in good faith for the purpose of seeking guidance as to questions about which he was in doubt, and whether he made a full and complete report to this attorney, and whether he acted strictly in accordance with the advice received, are questions for you to determine.

* * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

Docket No. CR-89-34-M-PGH

UNITED STATES OF AMERICA, PLAINTIFF

v.

MICHAEL E. GAUDIN, DEFENDANT

[Filed Sept. 4, 1990]

JUDGMENT AND COMMITMENT

On the 27th day of August, 1990, came Kris A. McLean, Assistant United States Attorney for the District of Montana, and the defendant, MICHAEL E. GAUDIN, appearing in his proper person and represented by his counsel, Stephen C. Moses, Attorney at Law, P.O. Box 2533, Billings, Montana 59103 (406) 248-7702.

And the defendant having been convicted on his plea of not guilty and a verdict of guilty by a jury of the offenses charged in Counts One through Seventeen, Counts Nineteen through Forty-Two and Counts Forty-Four, Forty-Five and Forty-Six of the Indictment filed in the above-entitled cause, to-wit:

COUNT ONE

From on or about December 31, 1985 and continuing through on or about December 31, 1988 within the District of Montana, Michael Earl Gaudin doing business as Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. with intent to defraud knowing and willfully engaged in the following pattern and practice:

A. Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. pur-

chased approximately 29 single family dwellings the loans on which were secured by deeds of trust and mortgages and insured by the United States Secretary of Housing and Urban Development. Within one year of said real estate purchases the loans were in default.

B. That Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. knowingly failed to make payments under the mortgage or deed of trust of said residential dwellings as the payments came due.

C. That Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. rented the properties to various tenants and applied and authorized the application of rents from said dwellings in the approximate amount of $120,000 for his own use. All in violation of Title 12 U.S.C. § 1709-2.

COUNTS TWO THROUGH FORTY-TWO

That on or about the date for each count listed below within the District of Montana, defendant Michael E. Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration did knowingly and willfully make or caused to be made a false writing and document knowing said writing and document contained false, fictitious and fraudulent statements and entries in that the defendant Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. submitted and caused to be submitted to the United States in connection with the loan closing settlement of each of the District of Montana properties listed in the column entitled "Property" a "Settlement Statement" on which Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. represented that the borrower had made a cash payment at settlement of the dollar amount listed in the column entitled "Settle-

ment Sheet" whereas in truth and in fact as defendant Michael E. Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. well knew the borrowers had made no actual cash payment and had in fact received a $1,000 payment from Michael Earl Gaudin for acting as a straw buyer:

Count	Date	Property	Settlement Sheet
Two	12/31/85	212 Higgins, Ave. Stevensville, MT 59870	$7,022.64
Three	03/20/86	450 Sixth Ave. Victor, MT 59875	6,860.19
Four	02/10/86	655 Sixth Ave. Victor, MT 59875	237.68
Five	02/10/86	309 DeSmet St. Hamilton, MT 59840	137.78
Six	01/15/86	514 Main St. Hamilton, MT 59480	7,229.90
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Thirty	10/16/86	1320 11th Ave. S. Great Falls, MT 59401	375.36
Thirty-One	11/06/86	1524 4th Ave. N.W. Great Falls, MT 59401	91.83

Count	Date	Property	Settlement Sheet
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Thirty-Six	11/13/86	1308 2nd Ave. S. Great Falls, MT 59401	322.55
Thirty-Seven	12/02/86	415 Seventh St. Hamilton, MT 59840	171.31
Thirty-Eight	12/24/86	1020 2nd Ave. S.W. Great Falls, MT 59401	296.42
Thirty-Nine	01/28/87	518 1st Ave. S.W. Great Falls, MT 59404	321.44
Forty	01/05/87	1204 2nd Ave. South Great Falls, MT 59405	164.26
Forty-One	12/24/86	3221 6th Ave. North Great Falls, MT 59401	272.86
Forty-Two	12/30/86	721 8th Ave. South Great Falls, MT 59405	256.22

and by so representing Michael Earl Gaudin d/b/a Hallmark Properties, Montana Regency, Inc. and Northwest Housing, Inc. obtained approximately $1,013,046.00 in federally insured funds to which he was not entitled in violation of Title 18 U.S.C. § 1001.

COUNT FORTY-FOUR

That on or about the 16th day of November, 1986 in the State and District of Montana the defendants Robert Forrest Payne, Jr. and Michael E. Gaudin in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the

Federal Housing Administration did knowingly and willfully cause false, fictitious and fraudulent statements to be made on a residential appraisal report HUD Form 92800 in that Payne grossly overstated the fair market value of the subject property and further falsely represented the condition of the interior walls, floors and plumbing to be "good" when in truth and in fact as Payne and Gaudin then well knew the subject property had a fair market value of approximately $20,000 less than appraised by Payne and the walls, floors and plumbing were in very poor condition all in violation of Title 18 U.S.C. § 1001.

COUNT FORTY-FIVE

That on or about the 19th day of November, 1986 in the State and District of Montana the defendants Robert Forrest Payne, Jr. and Michael E. Gaudin in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration did knowingly and willfully cause a false, fictitious and fraudulent statement to be made on a residential appraisal report HUD Form 92800 in that Payne grossly overstated the fair market value of the subject property to be $46,000 when in truth and in fact that Payne and Gaudin then well knew the fair market value of the property was $20,000 less than listed on the residential appraisal report all in violation of Title 18 U.S.C. § 1001.

COUNT FORTY-SIX

That sometime prior to February 14, 1987 in the State and District of Montana the defendants Robert Forrest Payne, Jr. and Michael E. Gaudin in a matter within the jurisdiction of the United States Department of Housing and Urban Development acting through the Federal Housing Administration did knowingly and willfully cause a false, fictitious and fraudulent statement to be made on a residential appraisal report HUD Form

92800 in that Payne listed the fair market value of the subject property to be $48,500 when in truth and in fact as Payne and Gaudin then well knew the actual fair market value of the subject property was approximately $12,000 all in violation of Title 18 U.S.C. § 1001.

And the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary appearing or being shown to the court,

IT IS THE JUDGMENT OF THE COURT that the defendant, MICHAEL E. GAUDIN, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of THIRTY-SIX MONTHS. This term consists of the term of Thirty-Six Months on Count I, and terms of Ten Months on each of Counts 2 through 17, 19 through 42, and 44, 45 and 46, all to be served concurrently.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of THREE (3) YEARS each on Counts I through 17, 19 through 42, and 44, 45 and 46; all such terms to run concurrently. Within 72 hours of release from the custody of the Bureau of Prisons, the defendant shall report in person to the probation office in the district to which the defendant is released.

While on supervised release, the defendant shall not commit another federal, state, or local crime, shall comply with the standard conditions that have been adopted by this court, and shall comply with the following additional conditions:

1. That he cooperate to accomplish the sale of any real estate remaining.

2. That he make restitution in the amounts and to the various persons as determined by counsel and the United States Probation Officer; and

3. That he pay a fine to the United States in the amount of TWO THOUSAND TWO HUNDRED AND NO/100 DOLLARS ($2,200.00), to be deposited into

a special Crime Victims Fund, pursuant to 18 U.S.C. § 3013.

DATED this 4[th] day of September 1990.

/s/ Paul G. Hatfield

PAUL G. HATFIELD
Chief Judge
United States District Court

SUPREME COURT OF THE UNITED STATES

No. 94-514

UNITED STATES, PETITIONER

v.

MICHAEL GAUDIN

ORDER ALLOWING CERTIORARI

Filed January 6, 1995

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted limited to Question 1 presented by the petition.

January 6, 1995

☆ U. S. GOVERNMENT PRINTING OFFICE: 1995 387147 20040